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REMARKS

Reconsideration and reexamination of this application is requested. Claims 1, 3, 4, 7, 10, 18 and 20 are amended. The amendments are supported by the original disclosure, for example page 4, line 10 to page 5, line 8, and Figures 1 and 2. Claims 1, 3, 4, 7, 10, 13, 15 and 18-20 remain pending.

Claims 1, 3, 4, 7, 10, 13, 15 and 18-20 are rejected under 35 USC 103(a) as being unpatentable over Kostun (6,427,112) in view of Hirano et al. (6,655,337).

Kostun and Hirano do not teach or suggest an air intake device that has the interrelation with the components recited in claims 1, 10 and 20. In particular, the intake device is generally surrounded by the components recited in claims 1, 10 and 20, so that the intake device needs to have the configuration recited in claims 1, 10 and 20.

Kostun does not disclose left and right main frames, an engine between the main frames, a fuel tank above the power unit, an intake device between the main frames and containing the features recited in claims 1, 10 or 20, a vehicle seat above the intake device, and the intake pipe positioned above the engine and between the fuel tank and the seat. Kostun illustrates a system 140 that is used on a vehicle (Figure 8). The Kostun system 140 does not require the layout for an intake device that is recited in claims 1, 10 and 20, including surrounding an intake device with components as claimed.

Likewise, Hirano is silent concerning the features missing from Kostun, including surrounding an intake device with components as claimed.

In addition, locating the intake pipe and connecting pipe so they extend from the same side of the air cleaner case, as recited in claims 1 and 10, is asserted to be obvious as being a rearranging of parts involving only routine skill in the art, with a citation to In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). The stated justification for such a change is where space considerations apply, which is asserted to be a common motivation for rearrangement of parts.

Locating the intake pipe and connecting pipe so they extend from the same side of the air cleaner case is not obvious from Kostun and Hirano. A person of ordinary skill in the art would be lead away from making such a modification to Kostun. Modifying

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Kostun so that the intake pipe 142 and the clean air tube 154 extend from the same side of the air cleaner 148 could be accomplished by:

- 1) routing the intake pipe 142 to the same side of the air cleaner 148 as the clean air tube 154;
- 2) routing the clean air tube 154 from the same side of the air cleaner 148 as the intake pipe 142; and
- 3) many or all components in Kostun being located on the same side of the air cleaner 148.

In alternatives 1 and 2, the length of the intake pipe 142 or clean air tube 154 would be unnecessarily increased to achieve such routing, which would increase material costs and reduce the available space surrounding the air cleaner 148 for other components of the engine. These disadvantages would suggest to a person of ordinary skill in the art not to make such a modification.

In addition, the resonators 146, 152 are positioned relatively close to the air cleaner 148 in Kostun. Having the intake pipe 142 and the clean air tube 154 extend from the same side of the air cleaner may not even be possible in light of the positions of the resonators 146, 152, or else require a repositioning of the resonators 146, 152 in Kostun to accommodate such a change. The extent of modifications that would be necessary to Kostun simply to make this alleged rearranging of parts would suggest the non-obviousness of the modification.

In alternative 3, the Kostun components would have to fit in the space available on the same side of the air cleaner, and the parts, including the resonators 146, 152, would have to be positioned as required by claims 1 and 10. There is no teaching from Kostun as to how the parts could be located on the same side of the air cleaner, and at the same time satisfy the language recited in claims 1 and 10.

However, perhaps more importantly, making such a modification would require a complete redesign of the components and operation of the air cleaner 148. The air cleaner in Kostun is designed to receive air through one side, clean the air, and discharge the air from an opposite side of the air cleaner. To locate the intake pipe 142 and clean air tube 154 so they extend from the same side of the air cleaner case would require a

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change to the internal flow path design of the air cleaner 148 to route air from the inlet to an outlet on the same side as the inlet. This would also very likely require a redesign of the filter that is used in the air cleaner 148 to accommodate the redesigned flow path.

Given the significant amount of changes to the air cleaner 148 that would be necessitated by the proposed modification of Kostun, a person of ordinary skill in the art would not have been led to make such a modification.

Moreover, with respect to claims 18 and 19, there is no teaching in Kostun that the intake pipe and the connecting pipe should extend generally forwardly from the air cleaner case, and that the throttle body/carburetor and the resonators 146, 152 are also located forwardly of the body. There is no indication from Kostun that space considerations apply or are an issue. Even if there were space considerations at issue, the intake pipe 142, clean air tube 154, throttle body 156, and resonators 146, 152 could just as easily be positioned to the rear of the air cleaner 148 and still satisfy the asserted "space considerations" justification. As a result, the only teaching for the parts to be located forwardly of the air cleaner case comes solely from Applicant's own disclosure, which is impermissible hindsight.

In addition, disposing the first and second resonators within the width of the air cleaner case, as recited in claims 1, 10 and 20, is asserted to be obvious as being the provision of adjustability, involving only routine skill in the art, with a citation to In re Stevens, 1212 F.2d 197, 101 USPQ 284 (CCPA 1954). The stated justification for such a change is where space considerations apply, which is asserted to be a common motivation for an adjustment.

Firstly, In re Stevens is directed to making a part adjustable so that it can be adjusted relative to another part. The claimed first and second resonators are not claimed as being adjustable relative to other parts (although adjustability would be encompassed by the claims). Therefore, the entire basis of this portion of the rejection and the reliance on "the provision of adjustability" is simply incorrect.

In addition, Kostun does not teach or suggest disposing the first and second resonators within the width of the air cleaner case. Kostun does not disclose any issues of space consideration with respect to the resonators 146, 152 and the air cleaner 148. As

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a result, there is no teaching to change the location of the resonator 146 relative to the air cleaner 148 in any manner.

The rejection asserts that a slight shift in the shape or location of the first resonator 146 of Kostun would enable the resonator to fit within the width of the air cleaner case. However, there is no teaching to make any shift in the shape or location of the first resonator. The fact that such a shift could be made is insufficient justification to support an obviousness rejection.

Further, Applicants disagree that the dimensional line shown in Figure 8 from Kostun on page 3 of the action is actually the "width" of the air cleaner case. The illustrated dimension appears to be the height of the air cleaner, and the resonator 152 appears to be positioned below the clean air tube 154, not in a space to the side of the clean air tube.

This is particularly the case with respect to claim 20, which requires: 1) the first and second resonators are each disposed within the width of the air cleaner case; 2) the first and second resonators are each disposed on the same side of the intake pipe and the connection pipe; and 3) the first and second resonators are each disposed at different vertical heights relative to each other. The illustrated dimensional line cannot be directed to both the width and the height of the air cleaner. If the dimensional line shown in Figure 8 from Kostun on page 3 of the action is the width, then Kostun does not disclose a height nor provide any disclosure about the relative heights of the intake pipe and the connection pipe. In contrast, if the dimensional line is the height, then Kostun does not disclose a width nor provide any disclosure about the resonators being disposed within the width of the air cleaner.

Further, arranging the first and second resonators on the same side of the intake pipe and connection pipe, as recited in claim 20, is asserted to be obvious as being an arrangement of "expedience in terms of the spacial parameters of the particular engine application", and being a rearranging of parts. In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

There is no teaching in Kostun that arranging the resonators as in claim 20 is desirable or necessary in any way. There are a number of ways that the resonators could

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be arranged to satisfy alleged "spacial parameters" without arranging the resonators on the same side of the intake pipe and connection pipe. The positions of the resonators in Figure 8 of Kostun could be moved to the left or the right, or up and down. Also, the sizes of the resonators could be changed to make them larger or smaller. All of these changes could occur to satisfy "spacial parameters", without arranging the resonators on the same side of the intake pipe and connection pipe. There is no teaching in Kostun or from anywhere else that the resonators should be arranged on the same side of the intake pipe and connection pipe.


Therefore, claims 1, 10 and 20 are patentable over Kostun and Hirano for the reasons presented above. Claims 3, 4, 7, 13, 15 and 18-19 depend from claims 1 or 10 and are patentable therewith. Applicants do not concede the rejections to the dependent claims.

In view of the above, early issuance of a notice of allowance is solicited. Any questions regarding this communication can be directed to the undersigned attorney, Curtis B. Hamre, Reg. No. 29,165 at (612) 455-3802.

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